

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3862 OF 2006
WITH
CRIMINAL APPLICATION NO.852 OF 2006

Parshuram Mahadev Kale ...Applicant
(In both the Applications)
Versus

Nanda Vasant Bhagyawan & Anr. ...Respondents
(In both the Applications)

Shri Sanjay Bhatia for the Applicant in both the Applications.

Shri S.V.More, A.P.P for the State in both the Applications

CORAM : A. S. OKA, J.

DATE : DECEMBER 07, 2006.

P.C.:

1. Heard the Advocate appearing for the Applicant. The Applicant is arraigned as an accused in a complaint filed under section 138 of the Negotiable Instruments Act, 1881. The first Respondent is the original complainant. By the Judgment and Order dated 11th July, 2006, the Applicant was convicted by the learned Metropolitan Magistrate. He was sentenced to suffer simple imprisonment for one year. He was directed to pay fine of Rs.15,50,000/- and in default, to suffer simple imprisonment for three months. Out of the said amount, a sum of Rs.15,00,000/- was ordered to be paid

to the first Respondent. The Applicant preferred an Appeal before the Sessions Court. On 14th August, 2006 the learned Additional Sessions Judge allowed the bail Application filed in the Appeal and suspended the order of sentence till the disposal of the Appeal on the Applicant depositing a sum of Rs.7,50,000/- within eight weeks from the date of the order. An Application was made in October 2006 by the Applicant before the learned Additional Sessions Judge for seeking extension of time to deposit the sum of Rs.7,50,000/- by a period of two months. The said Application was rejected by order dated 13th November, 2006. Criminal Application No.3862 of 2006 is filed for challenging the order dated 13th October, 2006 as well as order dated 14th August, 2006. Papers of the Criminal Application were produced before this court on 19th October, 2006. A solemn statement was made before this court that if time of eight weeks is granted to the Applicant, he will be in position to deposit Rs.7,50,000/- as directed by the Appellate Court. Accepting the said statement, this court issued notice to the first Respondent returnable on 09th November, 2006 and till the next date ad-interim relief was granted in favour of the Applicant.

2. When the Application was called out before this court on 09th November, 2006, it was brought to notice of this court that till that date no amount was deposited by the Applicant. Therefore, this court directed the Applicant to deposit a reasonable amount to show his bonafides. Ad-interim relief granted earlier was extended till 28th November, 2006. The order dated 09th November, 2006 specifically records that if reasonable amount was not deposited by the Applicant till next date, ad-interim relief will not be extended. Within the time extended by this court, i.e. till 28th November, 2006, the Applicant did not deposit a single farthing. An Application was filed on 25th November, 2006 being Application No.852 of 2006 praying that the condition imposed by the Appellate Court to deposit the amount be waived.

3. The learned Advocate for the Applicant submitted that the Applicant is a handicapped person and he is not in position to deposit the sum of Rs.7,50,000/-. He submitted that the Applicant has collected a sum of Rs.1,00,000/- and he will be able to deposit the same. He submitted that looking to the

financial difficulties faced by the Applicant, the order directing deposit of Rs.7,50,000/- be modified and the Applicant may be directed to deposit a sum of Rs.1,00,000/- .

4. I have considered the submissions. While suspending the sentence, the Appellate Court directed the Applicant to deposit a sum of Rs.7,50,000/- out of total compensation amount of Rs.15,50,000/- payable to the complainant. Time of eight weeks was granted to the Applicant on 14th August, 2006 to deposit the said amount. The Applicant did not challenge the said order. On the contrary, the Applicant applied in October 2006 before the Appellate Court by filing Misc. Application No.1871 of 2006 for extension of time to deposit the amount by further period of two months. The said Application was rejected by the learned Additional Sessions Judge.

5. When papers of Criminal Application No.3862 of 2006 were produced before this court on 19th October, 2006, an assurance was given by the Applicant to this court that if time of eight weeks was granted, he will be in position to deposit sum of Rs.7,50,000/- . Only

in view of the assurance given to this court, notice was ordered to be issued to the first Respondent and ad-interim relief was granted in favour of the Applicant. On 09th November, 2006 when this Application was called out before the court, it was found that nothing was deposited by the Applicant and therefore, this court directed the Applicant to deposit some amount to show bonafides. Ad-interim relief was again extended. Notwithstanding this opportunity which was granted to the Applicant, till today no amount has been deposited by the Applicant. Perusal of the order dated 19th October, 2006 and 09th November, 2006 clearly shows that only on the basis of assurance given to deposit sum of Rs.7,50,000/- by the Applicant, ad-interim relief was granted in favour of the Applicant.

6. Out of total compensation amount of Rs.15,50,000/-, the learned Additional Sessions Judge has directed deposit of Rs.7,50,000/- as a condition for suspension of the sentence. The learned counsel for the Applicant relied upon a decision of this court in the case of Dilip Dahanukar Vs. Kotak Mahindra Company Limited and Another [2006(5) Maharashtra Law

Journal Page 257]. Perusal of the said decision shows that the ratio of the said case is against the Applicant. This court has held that in an Appeal preferred against order of conviction under section 138 of the said Act of 1881, while suspending the order of sentence, it is advisable to impose a condition of deposit of compensation amount. In the present case, considering the fact that compensation amount is on the higher side, about 50% of the amount has been ordered to be deposited. The Applicant had given an assurance to this court to deposit the entire amount if time of two months was granted. Now the Applicant has stated he is not in position to deposit sum of Rs.7,50,000/-. Power under section 482 of the Code of Criminal Procedure, 1973 has to be exercised sparingly and only in exceptional cases. Looking to the conduct of the Applicant and considering the facts and circumstances of the case, no case is made out for modification of the condition imposed by the Sessions Court of deposit of Rs.7,50,000/-. However, considering the fact that the Appellant is a handicapped person, reasonable time deserves to be granted to him to deposit the amount.

7. Hence, I pass the following order:

- (i) The Applications are rejected.
- (ii) Time granted by the Appellate Court by order dated 14th August, 2006 to deposit the sum of Rs.7,50,000/- is extended till 07th February, 2007. It is made clear that no further extension will be granted under any circumstances.
- (iii) This order will not be construed as stay of proceedings of the pending Appeal. If the Appeal is ready for hearing, the concerned court is free to proceed with the hearing of the Appeal.
- (iv) All contentions on merits of the Appeal are kept open.

JUDGE